

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

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**UNITED STATES OF AMERICA,**

**Criminal No. 05-CR-62**

**v.**

**Vio: 18 U.S.C. § 1343  
[Felony]**

**MICHAEL J. LAWLER,**

**I N F O R M A T I O N**

**Defendant.**

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**THE UNITED STATES ATTORNEY CHARGES THAT:**

At all times material to this Information:

**INTRODUCTION**

1. The Penn Traffic Company, (hereinafter "Penn Traffic") was engaged in the business of operating supermarkets in Ohio, West Virginia, Pennsylvania, upstate New York, Vermont and New Hampshire. Penn Traffic was headquartered in Syracuse, New York.

2. Penny Curtiss Baking Co. of Syracuse, New York, (hereinafter "Penny Curtiss"), was a subsidiary of Penn Traffic, and MICHAEL J. LAWLER was the Director of Operations. As the Director of Operations, MICHAEL J. LAWLER was responsible for

reporting monthly financial performance numbers of Penny Curtiss to its parent company, Penn Traffic.

### **Penn Traffic's Sale of Securities**

3. Penn Traffic issued and sold shares of stock which became available for trading on various public markets. Stocks are known as "securities."

### **Regulation of the Sale of Securities**

4. The United States Securities and Exchange Commission (the SEC), headquartered in Washington, D.C., was an agency responsible for enforcing federal securities laws. SEC regulations protected members of the investing public by, among other things, requiring that a company's financial information was accurately recorded and disclosed to the public.

5. In order to sell securities to the public and to permit public trading of its securities, Penn Traffic was required to "register" its securities with the SEC. Penn Traffic was also required to comply with certain laws and SEC regulations designed to ensure that a company's financial information was accurately recorded and fairly disclosed to the investing public. Penn Traffic was further required to make and keep books, records, and accounts that accurately and fairly reflected its income, expenses and assets, and to devise and maintain a system of internal accounting controls which would reasonably assure that these objectives were satisfied.

6. Penn Traffic was required to and did file various periodic reports and other documents with the SEC, which included representations concerning its revenues, net

income and losses, earnings, the value of its assets and the amount of its liabilities. These documents included:

1. Forms S-3, S-4, and S-8 registration statements filed in connection with the registration of Penn Traffic's stocks;
2. Forms 8-K detailing material events;
3. Forms 10-Q, which included the quarterly report of its financial condition and the results of its operations; and
4. Forms 10-K, which included the annual report of its financial condition and the results of its operations.

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### **Accounting Principles and Practices**

7. Financial statements produced by Penn Traffic included both an Income Statement and a Balance Sheet.

1. Income Statements reported, among other things, the company's revenue and expenses incurred during a stated period of time, i.e., usually a three-month period or quarter, or a twelve-month period or year. The company's earnings per share (EPS) was generally calculated by dividing its net income by the number of its outstanding shares of stock.
2. Balance Sheets reported, among other things, the value of the company's assets and amount of its liabilities at the end of a reporting period, i.e., usually the last day of a quarter or the last day of a year.

### **Dissemination Of Financial Information**

8. Penn Traffic filed its Forms 10-K, 10-Q, 8-K, S-3, S-4, and S-8 with the SEC in Washington, D.C. These documents were available for public review.

9. Income Statements and Balance Sheets, which reflected the results of its operations and financial condition, were included in and with various documents Penn Traffic filed with the SEC and were accessible via the internet.

**COUNT 1**

**Wire Fraud**

**Title 18, United States Code, Section 1343**

1. The allegations contained in paragraphs 1 through 9 of this Information are repeated and realleged as though fully set out herein.

**The Scheme and Artifice to Defraud**

2. From in or about 1999 to on or about August 8, 2002, MICHAEL J. LAWLER knowingly and willfully devised and intended to devise a scheme and artifice to defraud Penn Traffic and its stockholders, bondholders, potential stockholders and bondholders; bond underwriters; and others in connection with securities of Penn Traffic, an issuer with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 and required to file reports under Section 15(d) of said Act.

3. It was part of said scheme to defraud that MICHAEL J. LAWLER would report to Penn Traffic: a) inflated sales figures on behalf of Penny Curtiss; b) reduced expense figures on behalf of Penny Curtiss; c) pre-booked Penny Curtiss sales figures prior to delivery of the product in question to give an inflated appearance of profitability; and d) inflated inventory numbers which collectively overstated the revenues of Penny Curtiss and Penn Traffic by as much as \$11,000,000 over a three-year period. These inflated revenue figures, in turn, were incorporated in Penn Traffic's financial statements, *i.e.*, Forms 10-K, 10-Q, 8-K, S-3, S-4, and S-8, and accessible to Penn Traffic shareholders throughout the United States via the internet.

**Execution of the Scheme and Artifice to Defraud**

4. From on or about September 12 through 14, 2001, at Syracuse, New York, in the Northern District of New York, and elsewhere, the defendant,

MICHAEL J. LAWLER,

for the purpose of executing the above-described scheme to defraud, knowingly and willfully transmitted and caused to be transmitted, by means of wire communications in interstate commerce, using a computer and modem, from Las Vegas, Nevada to a place in the Northern District of New York, fraudulent financial figures calculated to give Penny Curtiss an inflated appearance of profitability.

In violation of Title 18, United States Code, Section 1343.

GLENN T. SUDDABY  
United States Attorney  
Northern District of New York

Dated: September 29, 2005  
Syracuse, New York

By: \_\_\_\_\_  
Stephen C. Green  
Thomas A. Capezza  
Assistant U.S. Attorney  
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